

REMARKS

Applicants gratefully acknowledge the withdrawal of the indefiniteness and anticipation rejections.

Claims 1, 2, 5-13 and 16-20 are rejected under 35 U.S.C. § 103(a).

Claims 1, 5, 10, 12 and 16 were previously amended and claims 3, 4, 14 and 15 were cancelled without prejudice and disclaimer to the subject matter therein in the previous amendment.

Claims 1, 2, 5-13 and 16-20 remain pending in the application. Applicant respectfully requests reconsideration and allowance of each pending claim in view of the following remarks.

Rejections under 35 U.S.C. § 103

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 2142. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Applicant respectfully submits that the burden of establishing a *prima facie* case of obviousness has not been met by the Examiner in this case. Moreover, even if a *prima facie* case of obviousness was established, it would be rebutted by secondary evidence of nonobviousness.

A. Harada et al.

In the Office Action, the Examiner indicates that claims 1 and 3-9 are rejected as being unpatentable over Harada et al. (U.S. Patent No. 6,150,469). The Examiner correctly recognizes that Harada et al. fails to disclose that less than 50% of the functional groups of the polymer are sodium neutralized, as recited in the present claims. Office Action, page 2. However, the Examiner asserts that "it would have been an obvious matter of design choice to have less than 50% of the functional groups be sodium neutralized, since the applicant has not shown that less than 50% neutralization, rather than 50% neutralization solves any stated problem or serves any particular purpose." Office Action, page 2. Further, the Examiner alleges, that "a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties." Office Action, page 7. Applicant respectfully submits that both the unpredictability of the art and the specific experimental results provided in the present specification contradict the foregoing allegations.

In particular, the present specification demonstrates the criticality of the recited range in Example 2 which is reprinted below in pertinent part for convenience:

**Table 2**

Exposure Time (h)	Comparative Sample 4 AUL (g/g) Dowex 1-X8 (7.5g)		Sample 3 AUL (g/g) FloMag HAC-P (7.5 g)		Sample 4 AUL (g/g) FloMag HAC-P (4.0 g)	
	SAP	HSAP	SAP	HSAP	SAP	HSAP
0.5	18.14	18.00	19.19	19.28	17.93	17.73
1	18.93	18.27	19.63	19.67	18.64	18.40
2	19.12	18.30	19.66	20.15	19.15	19.11
4	19.34	18.62	20.11	21.15	19.48	19.96

Table 2 also demonstrates the surprising synergistic effects of combining a uSAP material with an LDH anionic clay material. For instance, when the HSAP material (*uSAP with a greater percentage of functional groups in the free acid form*) was used in

combination with the hydrotalcite material, *AUL values showed a slight improvement over the course of an extended time frame.* However, when the HSAP material was used in combination with a conventional anionic exchange material, no such improvement was found. In fact, the AUL values slightly decreased with the increasing percentage of functional groups in the free acid form in the comparative sample. [emphasis added]

As the Example clearly demonstrates, the percentage of functional groups in free acid form affects the properties of the composition. This is also consistent with the findings in Example 1 of the Specification which indicate that Sample 2 (with greater than 35% free acid) had a higher AUL value than Sample 1 (with 35% free acid). Accordingly, the evidence of unexpected results supports the criticality of the recited range and is sufficient to rebut a *prima facie* case of obviousness.

In fact, the very unpredictability of the art and the unexpected nature of the results of the invention are underscored by the comment in the Office Action that "one of ordinary skill in the art at the time of invention would recognize that a polymer having a degree of neutralization of 50% would have the same properties as the same polymer having a degree of neutralization of 49%." Office Action, pages 2-3. Indeed, the Examiner is correct that a person skilled in the art would have expected there to be no difference in properties, yet Applicant's experimental results clearly show a difference in properties when a different degree of neutralization is used, particularly over a period of time. Thus, the results are clearly unexpected and sufficient to rebut a *prima facie* case of obviousness.

Moreover, the reference teaches that "it is preferable that 50 mol %-90 mol % of acidic groups in the crosslinked polyacrylic acid/salt are neutralized. This teaching constitutes a teaching away from the claimed invention which recites that less than 50% of the groups are neutralized. It is well established that "a *prima facie* case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. MPEP 2144.05 III (8th Ed. Rev. 2) (citing *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997)). Therefore, even if a

prima facie case of obviousness was established, it would be rebutted by the foregoing teaching away in the reference.

In view of at least the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection and allow all pending claims.

B. Harada et al. in view of Jones, Sr.

Claims 2 remains rejected under U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,150,469 to Harada et al. in view of U.S. Patent No. 3,794,034 to Jones, Sr. In particular, the Examiner asserts that "Harada discloses all aspects of the claimed invention, but remains silent as to the pH range of 3.5 to 6.0" and "Jones discloses an absorbent article having a pH in the range of 3.5 to 6.0." Office Action, page 3.

In view of the foregoing discussion with regard to the Harada, it is apparent that Harada is deficient in its teachings. Jones fails to remedy the deficiencies of Harada because it also fails to teach or suggest the claimed polymer (and certainly does not overcome the teaching away by Harada). Therefore, the references in combination do not teach or suggest all the elements of the claims.

In view of at least the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

C. Harada et al. in view of Masaki et al.

Claims 10-12 and 14-20 are rejected under U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,150,469 to Harada et al. in view of U.S. Patent No. 5,821,179 to Masaki et al. In particular, the Examiner asserts that "it would therefore be obvious to one of ordinary skill in the art at the time of the invention to produce an absorbent article comprising the superabsorbent composition of Harada with the structure taught

by Masaki to reduce gel blocking of the superabsorbent composition.” Office Action, page 5.

In view of the foregoing discussion with regard to the Harada, it is apparent that Harada is deficient in its teachings. Jones fails to remedy the deficiencies of Harada because it also fails to teach or suggest the claimed polymer.

Masaki fails to remedy the deficiencies of Harada because it also fails to teach or suggest the polymer recited in the composition (and certainly does not overcome the teaching away by Harada). Therefore, the references in combination do not teach or suggest all the elements of the claims.

In view of at least the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

D. Harada et al. in view of Masaki et al. and Jones, Sr.

Claims 13 is rejected under U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,150,469 to Harada et al. in view of Masaki et al. and Jones, Sr. In particular, the Examiner asserts that “it would therefore be obvious to one of ordinary skill in the art at the time of the invention to produce an absorbent article comprising the superabsorbent composition of Harada with the structure taught by Masaki to reduce gel blocking of the superabsorbent composition.” Office Action, page 5.

In view of the foregoing discussion with regard to the Harada, it is apparent that Harada is deficient in its teachings. Jones fails to remedy the deficiencies of Harada because it also fails to teach or suggest the claimed polymer.

Masaki fails to remedy the deficiencies of Harada because it also fails to teach or suggest the polymer recited in the composition (and certainly does not overcome the teaching away by Harada). Therefore, the references in combination do not teach or suggest all the elements of the claims.

In view of at least the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

**CONCLUSION**

For at least the reasons outlined above, Applicant respectfully submits that the application is in condition for allowance. Favorable reconsideration and allowance of the pending claims is respectfully solicited. Should there be anything further required to place the application in better condition for allowance, Examiner Anderson is invited to contact Applicant's undersigned representative at the telephone number listed below. Applicant also requests that the Examiner acknowledge the Information Disclosure Statement filed on April 30, 2001 in the next Office Action.

Respectfully submitted,  
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